

## Message Text

PAGE 01 STATE 249866

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TO AMEMBASSY SEOUL NIACT IMMEDIATE

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C O N F I D E N T I A L STATE 249866

E.O. 11652: GDS

TAGS: PBOR, MARR, KS, KN

SUBJ: QUESTIONS REGARDING NORTHERN LIMIT LINE

REF: (A) SEOUL 8450; (B) SEOUL 8574

(C) SEOUL 8575

JOINT STATE/DEFENSE MESSAGE

1. IN ANSWERING QUESTIONS RAISED PARA 6 REFTEL A, AND IN CONNECTION WITH MAC MEETING, WE BELIEVE IT IMPORTANT TO KEEP WELL IN MIND DISTINCTION BETWEEN ISSUES OF TERRITORIAL CLAIMS (I.E., QUESTION OF SOVEREIGNTY OVER ISLANDS AND RELATED LAW OF THE SEA ISSUES) AND QUESTIONS OF RIGHTS UNDER ARMISTICE AGREEMENT. WE CONTINUE TO BELIEVE, AS SUGGESTED BY EMBASSY, THAT IT IS HIGHLY PREFEABLE TO CONFIDENTIAL

PAGE 02 STATE 249866

LIMIT US/UNC POSITIONS TO INTERPRETATIONS OF AND ASSERTION OF RIGHTS UNDER ARMISTICE AGREEMENT AND TO AVOID UNNECESSARY AND POSSIBLY PROVOCATIVE INVOLVEMENT IN TERRITORIAL DISPUTES. IN THIS REGARD, CARE SHOULD BE EXERCISED

TO AVOID BASING OUR POSITION ON SUPPORT OF ROK CLAIMS TO OR RIGHTS IN "TERRITORIAL SEA" OR "TERRITORIAL WATERS" AROUND ISLANDS WHICH TERMS UNDER INTERNATIONAL LAW CONNOTE SOVEREIGNTY AND RAISE COMPLEX LAW OF THE SEA ISSUES. INSTEAD OUR ARGUMENTS SHOULD BE CAST IN TERMS OF UNC RIGHTS UNDER ARTICLE 13 OF ARMISTICE AGREEMENT OF MILITARY CONTROL OVER ISLANDS AND TO DPRK OBLIGATION UNDER ARTICLE 15 TO RESPECT THE "WATERS CONTIGUOUS TO" THE ISLANDS. LIMIT

OF "CONTIGUOUS WATERS" AROUND THE ISLANDS WOULD BE THE SAME AS THE LIMIT OF "CONTIGUOUS WATERS" OF THE COAST OF THE ROK AND WHERE "CONTIGUOUS WATERS" OF ISLANDS OVERLAPS THOSE OFF THE COAST OF NORTH KOREA, A MEDIAN LINE SHOULD BE DRAWN SINCE THAT IS THE USUAL METHOD OF DELIMITING MARITIME BOUNDARIES BETWEEN OPPOSIT OR ADJACENT STATES.

2. THIS APPROACH, WITH BACKGROUND AND MORE DETAIL, GEARED TO ARGUMENTS PUT FORWARD BY DPRK, WOULD BE OUTLINED AS FOLLOWS:

(A) WE REJECT THE DPRK'S ASSERTION THAT PARAGRAPH 13 (B) OF THE ARMISTICE AGREEMENT ESTABLISHES PAENGYONG-DO, ECHONG-DO, SOCHONG-DO, YONPYONG-DO AND U-DO AS WITHIN DPRK COASTAL WATERS. PARAGRAPH 13(B) DOES NOT ADDRESS THE QUESTION OF "TERRITORIAL WATERS". THE ONLY REFERENCE TO WATERS IN PARAGRAPH 13(B) IS IN CONNECTION WITH THE REQUIREMENT OF WITHDRAWAL OF MILITARY FORCES OF BOTH SIDES FROM "THE COASTAL ISLANDS AND WATERS OF KOREA OF THE OTHER SIDE". THERE IS NO ATTEMPT TO DELINEATE SUCH "COASTAL" WATERS OR TO REFER TO THEM FOR ANY OTHER PURPOSE. IT SHOULD ALSO BE NOTED THAT THE PROVINCIAL BOUNDARY LINE MENTIONED IN PARAGRAPH 13(B) SERVES ONLY AS A CONVENIENT MEANS OF DESCRIBING WHICH ISLANDS ARE UNDER THE MILITARY CONTROL OF WHICH SIDE, AND DOES NOT PURPORT TO DIVIDE WATERS. THIS LIMITED PURPOSE

CONFIDENTIAL

PAGE 03 STATE 249866

OF THE LINE IS MADE CLEAR IN THE TEXT OF MAP 3, VOLUME 2 OF THE ARMISTICE AGREEMENT, WHICH INDICATES THAT THE SEAWARD EXTENSION OF THE PROVINCIAL LINE DRAWN ON THE MAP "IS SOLELY TO INDICATE THE CONTROL OF COASTAL ISLANDS ON THE WEST COAST OF KOREA. THIS LINE HAS NO OTHER SIGNIFICANCE AND NONE SHALL BE ATTACHED THERETO." THE CENTRAL IMPORTANCE OF PARAGRAPH 13(B) TO THE PRESENT CONTROVERSY IS, OF COURSE, THE FACT THAT IT SPECIFICALLY PLACE THE ABOVE ISLANDS UNDER THE MILITARY CONTROL OF CINCUNC.

(B) PARAGRAPH 13(B) WHICH PLACES THE ISLANDS UNDER UNITED NATIONS COMMAND "MILITARY CONTROL"

MUST BE READ IN CONJUNCTION WITH PARAGRAPH 15, WHICH REQUIRES THE NAVAL FORCES OF BOTH SIDES TO "RESPECT THE WATERS CONTIGUOUS TO THE DEMILITARIZED ZONE AND TO THE LAND AREA OF KOREA UNDER THE MILITARY CONTROL OF THE OTHER SIDE." IT SEEMS CLEAR, CONTRARY TO THE

ASSERTIONS OF THE KPA, THAT THE TERM "LAND AREA OF KOREA" AS USED IN ARTICLE 15 INCLUDES OFFSHORE ISLANDS AS WELL AS THE MAINLAND. ABSENT SOME SPECIAL UNDERSTANDING TO THE CONTRARY, WHICH THE KPA DOES NOT TO OUR KNOWLEDGE ASSERT, THE ORDINARY MEANING OF THE TERM "LAND AREA" WOULD NOT APPEAR MORE RESTRICTIVE THAN THE TERM "COAST", WHICH FOR PURPOSES OF DEFINING MARITIME JURISDICTION WOULD INCLUDE ISLANDS AS WELL AS MAINLAND TERRITORY. FOR EXAMPLE, BOTH UNDER CUSTOMARY INTERNATIONAL LAW AND THE PERTINENT CONVENTIONS, (1958 CONVENTION ON THE TERRITORIAL SEA AND THE CONTIGUOUS ZONE, 1958 CONVENTION ON THE CONTINENTAL SHELF), ISLANDS ARE TAKEN INTO ACCOUNT IN DETERMINING THE BOUNDARY OF A COUNTRY'S TERRITORIAL SEA AND CONTIGUOUS ZONE, AS WELL AS THE BOUNDARY OF ITS CONTINENTAL SHELF. ALSO, ISLANDS FAR OFFSHORE HAVE THEIR OWN TERRITORIAL SEA AND CONTIGUOUS ZONE.

(C) THE DPRK IS, THEREFORE, OBLIGATED UNDER PARAGRAPH 15 TO RESPECT THE WATERS CONTIGUOUS TO THE ABOVE-NAMED ISLANDS. SINCE THE AGREEMENT DOES  
CONFIDENTIAL

PAGE 04 STATE 249866

NOT PROVIDE ANY FORMULA FOR RESOLUTION OF THE BOUNDARY BETWEEN THE OVERLAPPING CONTIGUOUS WATERS OF THE TWO SIDES, SUCH RESOLUTION MUST BE FOUND BY REFERENCE TO GENERAL PRINCIPLES OF INTERNATIONAL LAW USED IN THE DRAWING OF MARITIME BOUNDARIES. SUCH PRINCIPLES DICTATE THE DRAWING OF A MEDIAN LINE EQUIDISTANT BETWEEN THE COAST (INCLUDING NORTH KOREAN ISLANDS) AND THE ISLANDS. THIS PRINCIPLE OF EQUIDISTANCE HAS SERVED AS THE BASIS UNDER CUSTOMARY INTERNATIONAL LAW AND IN THE ABOVE-NAMED CONVENTIONS TO DETERMINE VIRTUALLY ALL MARITIME BOUNDARIES SUCH AS THE BOUNDARIES OF THE TERRITORIAL SEA AND CONTIGUOUS ZONE AND THE CONTINENTAL SHELF BETWEEN BOTH OPPOSITE AND ADJACENT STATES.

3. THERE IS, OF COURSE, NO DEFINITION OF "CONTIGUOUS WATERS" IN ARTICLE 15 OF THE ARMISTICE AGREEMENT. IN THIS REGARD, BASED ON THE RECORDS AND INFORMATION AVAILABLE TO US HERE, IT WOULD APPEAR THAT WE HAVE IN FACT RESPECTED A "CONTIGUOUS WATERS" LIMIT OF TWELVE MILES OFF NORTH KOREAN COAST AS CLAIMED BY NORTH KOREA (EXCEPT WHERE ACCESS TO ISLANDS OR CONFLICTING ROK TERRITORIAL SEA CLAIM

INVOLVED). IN ACCORDANCE WITH THE JSAO (JOINT SEA AIR OPERATION) ROK LIKEWISE PATROLS OUT TO AT LEAST TWELVE MILES FROM ITS COAST FOR ARMISTICE AGREEMENT PURPOSES.

UNDER THESE CIRCUMSTANCES, IT WOULD APPEAR DIFFICULT TO CLAIM OTHER THAN TWELVE MILES "CONTIGUOUS WATERS" LIMIT FOR ISLANDS UNDER ARTICLE 15. (THIS, OF COURSE, WOULD BE LIMIT SOLELY FOR PURPOSES OF DEFINITION OF "CONTIGUOUS" IN ARTICLE 15 OF ARMISTICE AGREEMENT AND HENCE FOR DEFINITION OF RIGHTS AND DUTIES OF PARTIES UNDER ARMISTICE AGREEMENT, AND WOULD HAVE NO RPT NO IMPLICATION IN TERMS OF TERRITORIAL SEA QUESTION OR CLAIMS.) IN THIS CONNECTION WOULD APPRECIATE CLARIFICATION OF REFERENCE IN PARA 6 (C) REF A THAT UNC/ROK HAVE CLAIMED THREE MILE "CONTIGUOUS WATERS" LIMIT FOR ISLANDS.

4. FOLLOWING ABOVE APPROACH AND ARGUMENT, ANSWERS TO QUESTIONS POSED PARA 6 REF (A) ARE AS FOLLOWS:  
CONFIDENTIAL

PAGE 05 STATE 249866

(A) THE U.S. DOES NOT RECOGNIZE TERRITORIAL SEA CLAIMS BEYOND THREE MILES AND PROTESTS SUCH CLAIMS. CONSEQUENTLY WE SHOULD NOT RECOGNIZE THE NORTH KOREAN CLAIMED TWELVE MILE TERRITORIAL SEA LIMIT. WE SHOULD, HOWEVER, CONTINUE TO RESPECT DPRK CLAIMED TWELVE MILE "CONTIGUOUS WATERS" LIMIT IN AREAS WHERE IT DOES NOT RELATE TO ACCESS TO ISLANDS AND WHERE ROK TERRITORIAL WATERS DO NOT OVERLAP IN ACCORDANCE WITH CURRENT RULES AND AUTHORITIES ISSUED TO U.S. FORCES.

(B) AS FAR AS WE CAN TELL, NLL IS UNILATERAL LINE AND IS NOT RPT NOT RECOGNIZED BY NORTH KOREA AS A DIVIDING LINE BETWEEN THE "CONTIGUOUS WATERS" OF THE ISLANDS AND THOSE OF THE NORTH KOREAN COAST FOR PURPOSES OF THE ARMISTICE AGREEMENT. ON THIS ASSUMPTION WE BELIEVE PATROL LIMIT LINE SHOULD REFLECT MEDIAN LINE AS DESCRIBED ABOVE RATHER THAN NLL.

(C) THE UNC SHOULD TAKE NO POSITION AS TO THE TERRITORIAL WATERS CLAIMS OR EITHER NORTH KOREA OR THE ROK. WITH RESPECT TO UNC CLAIMS REGARDING "CONTIGUOUS WATERS" UNDER ARTICLE 15, SEE PARA 3 ABOVE.

5. ABOVE GUIDANCE WAS SUBSTANTIALLY PREPARED PRIOR TO RECEIPT OF REFS B AND C.

OUR COMMENTS ON ROK MEMORANDUM AND NLL FOLLOW SEPTTEL.  
RUSH

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<< END OF DOCUMENT >>

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